

VZCZCXYZ0000
PP RUEHWEB

DE RUEHGT #0884/01 2591801
ZNY CCCCC ZZH
P 161801Z SEP 09
FM AMEMBASSY GUATEMALA
TO RUEHC/SECSTATE WASHDC PRIORITY 8070
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY
RUEHME/AMEMBASSY MEXICO PRIORITY 5242
RHMFISS/CDR USSOUTHCOM MIAMI FL PRIORITY
RHMCSUU/FBI WASHINGTON DC PRIORITY
RHEFDIA/DIA WASHINGTON DC PRIORITY
RUEABND/DEA HQS WASHDC PRIORITY
RUEAIIA/CIA WASHDC PRIORITY
RHEHNSC/NSC WASHDC PRIORITY
RUCNDT/USMISSION USUN NEW YORK PRIORITY 0295

C O N F I D E N T I A L GUATEMALA 000884

SENSITIVE
SIPDIS

DEPT PLS PASS TO AID FOR LAC/CAM -SEIFERT

E.O. 12958: DECL: 09/16/2019

TAGS: [PGOV](#) [SNAR](#) [KCRM](#) [GT](#)

SUBJECT: WITH ENCOURAGEMENT FROM THE AMBASSADOR AND CICIG,
PRESIDENT COLOM APPROVES JUDICIAL REFORMS

REF: A. GUAT 780
[1](#)B. GUAT 454
[1](#)C. GUAT 394

Classified By: PolOff Gina M. Werth, reasons 1.4 (b)&(d)

[1](#)1. (C) SUMMARY: On September 2, Guatemalan President Alvaro Colom signed into law two important pieces of criminal legislation that had been supported by the international community. The two laws, one for plea-bargaining and one for &high-impact8 courts with additional security measures, would create new tools to help prosecutors successfully try and convict criminals. Colom had hesitated to approve the measures due to strong opposition from his General Counsel, Carlos Larios Ochaita. However, a last minute meeting on September 2 with the Ambassador and CICIG Commissioner Carlos Castresana convinced Colom to sign the reform bills into law. The entire episode speaks poorly of Congressional-Executive coordination. That said, the approval of the laws continues progress on judicial reform.
END SUMMARY.

[1](#)2. (C) On August 4, the Guatemalan Congress passed two laws designed to strengthen the rule of law. The &Law on Penal Competence in High Risk Processes8provides for &high-impact8 courts where additional security measures would mitigate the risks to judges, prosecutors, and witnesses in narco-trafficking and other dangerous cases. The second law, a reform of the Organized Crime Law, empowers judges to reduce a witness's sentence or suspend prosecution entirely in exchange for witness cooperation i.e. plea-bargaining. This creates a previously non-existent incentive for witnesses to cooperate with the prosecution. Both laws were strongly supported by the Embassy and CICIG (Ref A).

[1](#)3. (C) On September 1, the Embassy learned that President Colom had told Canadian Ambassador McKechnie and CICIG Commissioner Castresana that he would veto both laws due to alleged drafting mistakes that made them &unconstitutional8. During a September 2 call with Colom, the Ambassador underscored the importance of the laws in improving the administration of justice in Guatemala. (Note: September 2 marked the end of the 15-day decision timeline.) Colom initially hesitated, stating that the situation was &complicated8, but later in the evening summoned the Ambassador and Castresana to the Presidential Palace, where they met together with Carlos Larios Ochaita, General Counsel

to the President. (Note: Larios, who was Supreme Court President in 2003, has previously opposed legal reforms which would improve transparency and threaten organized crime, Ref 1B. End Note.) The President, clearly uncomfortable, said that he was willing to sign the plea-bargaining law (&colaboracion eficaz8), given Castresana,s explanation of its legality. However, he asserted that the &high-impact8 courts bill had a drafting flaw that would permit the opposition to sue him, thereby putting his presidency at risk. Colom was therefore inclined to veto the bill or return it, unsigned, to the Congress, for Congress to enact.

14. (C) Castresana pushed hard against the latter option, saying that it would undermine the legitimacy of the bill. The Ambassador told Colom that he did not believe any serious politician would use the bill to bring a lawsuit against Colom given that an overwhelming majority of Congress, including all political parties, had voted for the bill; the press supported it; private sector groups did not oppose it; and civil society and the international community supported it. The Ambassador and Castresana agreed that if the President signed the bill, both the Ambassador and Castresana would ask Congress President Roberto Alejos and party blocs in Congress to amend the bill before it was implemented. (Comment: While this is a workable solution, the timing is uncertain.) Larios made clear he believed Colom was best served by not signing the bill. Colom agreed with the Ambassador and Castresana and signed the two bills in front of them, which were published in the September 3 official gazette.

15. (C) Comment: Colom,s strategy of summoning the Ambassador and Castresana to the Presidential Palace to discuss the legislation, rather than taking Larios, advice, suggests that he felt the need to have their agreement, if not their blessing, for his decision, and he may have wished to have someone else,s opinion to justify overruling Larios. It remains unclear what motivated Larios to wait until two days before the end of the decision period before counseling Colom that he should veto the laws, suggesting that Larios may have had an ulterior motive for trying to quash these important judicial reforms. The First Lady,s views were not mentioned, although the Ambassador and Castresana believe that she and Larios are aligned politically. The episode speaks poorly of Congressional-Executive coordination on bill-drafting; the Ambassador pressed Larios on this point, and will suggest that future legislation be coordinated, at least informally, with Larios to avoid any pretext for future vetoes. (Note: CICIG has five laws in the pipeline.)

16. (C) The passage of the laws adds to the momentum generated by CICIG investigations; some initial favorable court decisions on impunity cases; the putting into operation of the Attorney Generals, wiretapping unit (with considerable USG assistance); and the renewal of CICIG,s mandate for two more years. The next big challenge for judicial reform is the ongoing process to select the new judicial authorities.

McFarland